

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, DECEMBER 15, 2005
TIME: 9:00 AM
PLACE: KONA OUTDOOR CIRCLE EDUCATIONAL CENTER
76-6280 Kuakini Highway
Kailua-Kona, HI 96740

ATTENDANCE:

HIBC MEMBERS: Ron Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Pele Hanoa, Ka'u
Roger Harris
Ku Kahakalau, Hamakua
Ulu Sherlock, Hilo
Cynthia Nazara, Kona
Dutchie Saffrey, Puna
Charles Young

ABSENT: Roy Helbush
Anna Cariaga, Ka'u
Kaleo Kualii'i, Kona
Jacqui Hoover

STAFF: Keola Lindsey, History and Culture Branch
Mary Anne Maigret, Hawai'i Island Assistant Archaeologist
Pam Matsukawa, Deputy Attorney General

GUESTS:

Lunakanawai Hauani'o	Joanne Kahanamoku Sterling
Pam Mizuno	Ruby McDonald
Bob Rechtman	Byron Moku
Keikialoha Kekipi	Anthony Ako
Curtis Tyler	Ron Cawthon
William Aila, Jr.	Iwalani Arakaki
Ui Pauole	Arthur Mahi
Leanne Leslie	Keolalani Hanoa

I. OPENING REMARKS

HIBC Chair Charlie Young (Young) calls the meeting to order at 923a.

Pele Hanoa (Hanoa) offers a pule.

Introduction of Hawai'i Island Burial Council Members, Historic Preservation Division staff and the Deputy Attorney General.

II. HIBC MEETING MINUTES

A. APPROVAL OF THE OCTOBER 20, 2005 HIBC MEETING MINUTES (open and closed minutes)

Dutchie Saffrey (Saffrey) says she has noticed that the minutes do not show who was absent. Previous HIBC minutes would list who was absent.

A motion is made to approve the October 20, 2005 open and closed HIBC meeting minutes with a revision to list which HIBC members were absent. (Elarionoff/Harris)

Vote: All in Favor

B. APPROVAL OF THE NOVEMBER 17, 2005 HIBC MEETING MINUTES

A motion is made to approve the November 17, 2005 HIBC meeting minutes with a revision to list which HIBC members were absent. (Elarionoff/Sherlock)

Saffrey says on page 1, the last paragraph regarding Elarionoff's statement, he specifically named Joanne Sterling in his testimony, and Saffrey has noticed that is missing from the transcribed minutes- it was an important statement.

Vote: All in Favor

III. BUSINESS

A. A BURIAL TREATMENT PLAN FOR FEATURE A OF SIHP SITE 11476 LOCATED ON TMK: 3-8-2-002:002 KEALAKEKUA AHUPUA'A, SOUTH KONA DISTRICT, ISLAND OF HAWAI'I

Information/Determination/Recommendation: Presentation by Rechtman Consulting, LLC. Council determination to recognize lineal and/or cultural descendants. Council determination to preserve in place or relocate previously identified Native Hawaiian burials. Council recommendations to the Department on the short and long term preservation measures detailed in the burial treatment plan.

Robert Rechtman (Rechtman) gives an overview. Rechtman is here to present a burial treatment plan for informational purposes only. This is for a property that is roughly 70 acres in Kealahou. The property was inventory surveyed by a different firm, IARII. Myra Tuggle did that work. Rechtman is putting together the burial treatment plan.

There are development plans for 33 two acre lots with a central roadway with smaller roads running off of the central road.

The inventory survey identified an old road that is locally known as the “pineapple road” which provided access for a very short lived pineapple operation in Ka’awaloa and Kealakekua on the slopes and the road led down to the processing area closer to Kealakekua Bay. There are a series of archaeological sites along this roadway- Rechtman has seen some of these on other properties. The burial site in question here is situated near that roadway. It was the suspicion of the firm that did the archaeology work that the burial site was related to the pineapple operation, but there was nothing during the archaeology work and brief examination of the iwi in the site that indicates that this anything other than a Hawaiian burial.

On Page 7, last sentence of the burial treatment plan under “Documentary Research”, Rechtman says to change the initial in front of Keohokalole to “A” instead of “M”. This is a typo and was pointed out by Clarence Medeiros, who has applied for descendency.

Legal notices were published. Rechtman received two responses- one directly to Rechtman, Clarence Medeiros and one to Keola Lindsey of the SHPD, Leanne Leslie. Rechtman met with Medeiros and discussed the details of the plan and incorporated Medeiros’ thoughts into the plan. Rechtman also got a copy of the plan to Leslie.

The proposed treatment is preservation in place. There will be a permanent preservation easement established around feature A of this site, which contains the burial. The preservation buffer will be 20 feet from the edge of the feature. Page 9 of the plan shows a detail of where the burial site is situated relative to roadways and lot 19.

The feature is in good condition. There have been some small collapses in some places. The feature will be stabilized. The grass surrounding the feature will be cut. A boundary pin will be cemented at each corner of the preservation easement. A low hedge of ki will be planted at the buffer zone. The signage is shown on page 8. Access will be granted to recognized descendants. There will be a 10 foot wide access easement created off of a secondary road which will allow descendants to park and walk a few steps to the site.

The interim protection measures will include both the establishment of preservation fencing and having a monitor present during construction of the roadways. The fencing will be restricted to the preservation buffer, and the monitor’s presence will ensure that is honored.

The current landowner intends to implement the proposed measures as soon as the plan is approved.

Leningrad Elarionoff (Elarionoff) asks Rechtman about the collapse of the feature Rechtman referred to.

Rechtman says this is an above ground feature, and some of the edges have slumped over the years.

Elarionoff asks Rechtman what the purpose of the 20 foot road shown on page 9 of the plan is.

Rechtman says it is odd that there is not a cul-de-sac, but thinks it may provide access to the lots. It may connect up to other properties, Rechtman is not sure.

Young asks if the iwi are exposed.

Rechtman says the iwi are not exposed.

Young says the archaeological inventory survey is saying that there is one burial in the 66 acres of this property.

Rechtman says only one burial site has been identified.

Keola Lindsey (Lindsey) says three individuals have responded to the notices published for this plan. One of those individuals has submitted paperwork for the Division to assess. The other two individuals will submit soon. Hopefully by next Month, the Division will have recommendations to the HIBC regarding descendancy.

Maryanne Maigret (Maigret) says the predominant site identified during the inventory survey are walled field systems commonly referred to as the "Kona Field System". There has been a very extensive data recovery plan that looked at the soils.

Young says many of these areas were chain dragged at some point in time for ranching, which makes it more difficult to find these features.

Lunakanawai Hauani'o (Hauani'o) says the term inadvertent should have no place in these previously populated areas, any iwi we come across in these areas should be previously known.

Leanne Leslie (Leslie) says she did respond to Rechtman's plan, and is in agreement with the proposal. Leslie is concerned that out of 36 total features identified only 7 were tested. Leslie wonders if monitoring is being required, and if it is not, Leslie would recommend it.

Ulu Sherlock (Sherlock) says if the data recovery addresses Leslie's concerns.

Maigret says she will have reviewed the data recovery results by the next meeting.

A motion is made to close agenda item III- A. (Saffrey/Harris)

Vote: All in Favor

B. FINAL PRESERVATION PLAN FOR SITE 2009- HAUKALUA HEIAU LOCATED AT LA'ALOA BEACH PARK, LA'ALOA AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND [TMK (3) 7-7-10:36]

Information/Determination/Recommendation: Council determination to recognize lineal and/or cultural descendants. Council recommendations to the Department on the revised burial treatment plan.

Lindsey says staff has provided the HIBC a fairly comprehensive summary of this issue- past HIBC minutes, the burial treatment plan submitted by the County of Hawai'i, Kapa Maly's report, and SHPD correspondence which includes recommendations made by the previous HIBC in April of this year.

Lindsey refers to a December 9, 2005 memorandum from SHPD Cultural Programs Director Sunny Greer to the HIBC which recommends the HIBC defer recognizing Valerie Luhiau Anjo's claim.

There are other individuals who have submitted claims and those are under review. Others have expressed an interest in submitting a claim, and that submittal is pending.

Sherlock asks if there are people other than Luhiau Anjo who have submitted claims.

Lindsey says he knows for sure that at least one other person has actually submitted their claim, and two others have expressed an interest in submitting a claim.

Young says the HIBC voted to preserve in place in April 2005.

Lindsey agrees.

Young asks if the burial treatment plan has been revised to incorporate the HIBC's recommendations from the April 27, 2005 meeting.

Lindsey says the revisions do not completely address the HIBC recommendations. There is no consensus among the groups identified in the HIBC's recommendations.

Young asks if there are recognized descendants at this point.

Lindsey says no.

Ruby McDonald (McDonald) says she submitted a claim several years ago which showed how she descended from Puhi. McDonald wants to be recognized and does not know what is taking the Department so long.

Young says McDonald did put in a claim.

McDonald says two times now.

Lindsey says in terms of the claim McDonald previously submitted, that has not been located. The Division asked McDonald to resubmit her claim, and she did last week. McDonald's claim is one of the claims currently under review.

Saffrey asks how long it takes for the Department to review a claim. Saffrey feels that the review of McDonald's claim should be expedited. Saffrey wonders what the HIBC can do to help.

Lindsey says in terms of McDonald's previous submittal a few years ago, he can't comment, the paperwork has not been located yet. In terms of the claim McDonald submitted last week, the Division has 30 days to assess and provide the HIBC with a recommendation and then return McDonald's paperwork.

Saffrey says 30 days means that the HIBC should have a recommendation by the January meeting.

Lindsey agrees. Lindsey also agrees that the review should be expedited given the history involved with McDonald's claim.

Saffrey asks if the HIBC can request an expedited request and if the request should be directed to Melanie Chinen.

Lindsey says the request could be directed to Chinen as the Administrator of the Division, or the request could be more general, and directed to the Division.

Saffrey asks if the request would be detailed in the minutes of this meeting.

Lindsey says any recommendation the HIBC votes on is detailed in the meeting minutes.

Sherlock says there has been some reorganization within the Division with staff leaving, and that may be why McDonald's previous claim was never addressed.

Saffrey understands that, but feels a two year delay is a little to long. There must be something the Council can do to address descendancy claim.

A motion is made to request that a staff recommendation for all descendancy claims to La'aloa Ahupua'a be provided to the HIBC for review by the January 2006 HIBC meeting. (Saffrey/Young)

Rechtman asks if the Council can recognize McDonald based on just her testimony absent a recommendation from the Department.

Pam Matsukawa (Matsukawa) says the Rules state that the Division submits a recommendation to the Council first.

McDonald says the Ahupua'a is La'aloa. The 'ili is 'Ililoa or Momoku. Her 'ohana is Puhi.

Keolalani Hanoa (Hanoa) says the problem with reviewing claims is that the Division has no genealogist on staff.

Kekialoha Kekipi says he recalls McDonald being recognized in that area by knowledgeable individuals.

Young says he is trying to get the Division to assess the claims by next meeting.

McDonald says it is her understanding that the Division has contracted a genealogist to review claims.

Pam Mizuno (Mizuno) says that the HIBC does have a determination to make today, and the memorandum referred to earlier from Sunny Greer is a request to defer that determination. The Division also recommended deferral at the November meeting, and Mizuno would like to know why.

Young says the memo says the Division has not been able to verify the applicant's lineal descent claim.

Mizuno says it is up to the Council to concur with the deferral.

Young agrees.

Lindsey says the Department is recommending deferral of that specific descendant recognition, but it sounds like there is testimony forthcoming from that family at today's meeting.

Vote: All in Favor

Young says that one of the HIBC members will be leaving and the HIBC will lose quorum. The HIBC will vote to recess the meeting and wait until another member arrives at the meeting and the HIBC regains quorum.

A motion is made to recess the HIBC meeting. (Nazara/Sherlock)

Vote: All in Favor

The HIBC meeting is recessed at 1013a.

The HIBC meeting reconvenes at 1143a with a quorum of members present.

Ron Cawthon (Cawthon) asks that this Council reaffirm and not change the previous recommendations made by the HIBC in April of this year. The plan is revised but does not include recommendations made by the HIBC in April 2005. Cawthon requests that the HIBC recognize the La'aloa 'Ohana as a Native Hawaiian Organization pursuant to 13-300-2 of the Hawai'i Administrative Rules. Cawthon says the La'aloa 'Ohana would be recognized under NAGPRA.

The La'aloa 'Ohana has requested for over 10 years that the State Historic Preservation Division investigate potential 6E violations committed by the County at La'aloa Beach Park. Cawthon says that the current Administrator of the Division is finally investigating these violations.

In regards to the iwi at Haukalua Heiau, it seems some people do not understand the difference between a burial and a religious object. The iwi in the Heiau are religious objects. There were no skeletal remains, a small piece of human bone was discovered. The only reason it was discovered is that the La'aloa 'Ohana reported the looting of the Heiau in 1995. Nobody has the right to remove the lele without the permission of the religious practitioners who put it there.

Young asks Cawthon what the difference is between the plan that was presented to the Council in April 2005 and the plan that was revised in June of 2005.

Cawthon says he spoke with Sunny Greer and Melanie Chinen and they cannot determine what the difference between the two plans is other than the later one says it is revised.

It is crucial that all stakeholders be involved, not just one 'ohana. The crux of this plan is that one 'ohana says how they want it. The effect is that the hundreds of Hawaiians involved with are out.

It appears that the County is refusing to incorporate the HIBC's recommendations.

Young asks if the Council approved a plan in April 2005.

Lindsey says the HIBC rendered a determination to preserve the iwi in the Heiau in place in April 2005 and made recommendations to the Department on the final preservation plan for the site. A burial treatment plan is the vehicle an applicant uses to be on the HIBC agenda.

Ku Kahakalau (Kahakalau) says that one thing that is clear is the 50 foot buffer that is shown in the revised plan. This was something that was not clear in April.

The issue of the lele is very important. There are private burial sites, and there are heiau. A heiau should not be treated like a private burial site. If the heiau are currently being used by cultural practitioners then it is not the prerogative of anybody to remove the items associated with cultural practices.

Kahakalau says she made a strong recommendation that the lele not be removed, and that is still proposed in the revised plan.

Kahakalau says the wording of the signage in the original plan was in her opinion derogatory towards Hawaiians and cultural practitioners and the language of the signs have been changed to reflect a more ongoing practice.

Elarionoff asks if Kahakalau knows the meaning of 'Haukalua'.

Kahakalau says there could be many meanings, but she focuses more on the meaning of La'aloa- very sacred.

Elarionoff says he wonders if this Heiau could be related to the practice of lua- the Hawaiian martial art.

Lunakanawai Hauani'o (Hauani'o) says the recommendations made in April 2005 need to be included verbatim in the plan.

Hauani'o says the meeting minutes are not accurate. Hauani'o says he did not get a copy of the revised plan, and therefore cannot say if he agrees to it or not.

Sherlock asks if the La'aloa 'Ohana is a incorporated 501(c)(3) organization.

Hauani'o says no.

Sherlock says she is trying to figure out who the La'aloa 'Ohana is and what the 'Ohana wants.

Hauani'o says the 'Ohana wants what the kupuna put on paper.

Sherlock says she is looking for a solution.

Hauani'o says if the plan incorporates all of the HIBC recommendations verbatim, maika'i, but it does not.

The motions detailed in the approved minutes are inaccurate.

Saffrey asks why Hauani'o was not provided a copy of the revised plan.

Lindsey says the La'aloa 'Ohana was provided a copy of the revised plan.

Cawthon says Hauani'o specifically requested a copy of the revised plan. They said they did not have the money to mail it, so it was about two weeks before Cawthon had the time to go by their office and pick it up.

Young says he is very supportive of Community groups taking a more active role in taking care of these cultural sites in partnership with the County or State. Young has participated in the same thing in Ho'okena.

The Council has already made recommendations that were unanimously approved in April 2005. Young does not know if anything is going to change that.

Anthony Ako (Ako) distributes a letter to the Council written by his wife, Valerie Luhiau-Ako. Ako says he has added in what she forgot to put in.

Ako says the SHPD has no business in this issue. It is a County issue and there were agreements that were in process. Ako says that Division staff have made a claim without his wife's permission that his wife is claiming lineal descendancy to unidentified skeletal remains. Ako says his wife is claiming descendancy from Opunui who is from Maui. Two genealogists have reviewed their claim and have been unable to come to a conclusion. The Puhi line of their family has not been researched.

Their claim is to the general area. You cannot identify these remains unless you do a DNA test.

Another thing not taken into account is the sacredness of genealogy. A lot of genealogy does not address many things that happen in Hawaiian families. Ako says he has witnessed his wife get a phone call from an individual who disagreed with his wife's view, his wife hung up the phone on that person.

Ako says we need to throw the money out of this and take care of the dead. How can things here be resolved when there is so much dishonesty going on. The lele should be moved to the side like the lele at Pu'ukohola. Ako says he is not pointing the finger here.

Saffrey says Ako is pointing the finger, and she appreciates that because he is being honest. Saffrey says Ako is double talking when he says he is not pointing the finger, because he is. Saffrey is concerned that his wife did not sign the letter Ako distributed to the Council. Saffrey would like a signed letter next time.

Iwalani Arakaki (Arakaki) says she did submit her paperwork. She got together with Lindsey yesterday and faxed it in. Her family is Kahula from La'aloa. Arakaki is not happy with what is going on. Arakaki wants to help, but doesn't want the fighting. Arakaki says she submitted a deed to La'aloa.

Kahakalau asks if Arakaki knows about the lele that is being talked about.

Arakaki says a'ole.

Kahakalau says it is on the highest area of the heiau, because it is closest to akua. There is a difference of opinion whether the lele should stay there at the highest spot or moved to another area.

Arakaki would prefer to have it where it is at. Arakaki does not know too much about what is going on, she just found out about this a year and a half ago. Arakaki wants to support if they are going to do the right thing, but all this fighting upsets her.

Young asks Lindsey if Arakaki submitted her paperwork.

Lindsey says she has. Lindsey met with Arakaki yesterday and faxed the paperwork to Kapolei.

Young says he thought nobody else had submitted a claim.

Lindsey says there are people who have submitted paperwork, and the Department has already reviewed that paperwork and provided the Council with a recommendation that recognition be deferred. This would be Valerie Luhiau Ako.

Lindsey says there are people who submitted paperwork, and the Department is reviewing it. This would be McDonald and Arakaki.

Lindsey says there are people who have expressed an interest in submitting a claim but have provided no paperwork..

Young asks if this is specific to La'aloa.

Lindsey says these claims are specific to La'aloa.

Saffrey asks Lindsey about the deed Arakaki mentioned.

Lindsey says the deed is part of the paperwork sent to Kapolei yesterday.

Cynthia Nazara (Nazara) asks Arakaki if she has seen the site at La'aloa.

Arakaki says she has been to La'aloa Beach Park, but they were talking about other stuff that day.

Nazara asks Kahakalau about lele.

Kahakalau says generally the idea is to place offerings as close to akua as possible, that is why the highest point in a place. That is why Mauna Kea is so sacred. There can be temporary lele, but the idea of a cultural practice is an ongoing thing. Lele usually stay in place once it placed in a location and is repaired as needed.

Kahakalau has had experiences where there have been iwi in a heiau. The iwi were put in the heiau for a reason and the lele are put on a heiau for a reason. It is up to the kupuna to allow us to put the lele up. If it is pono, things will be maika'i, if it is hewa you will find out and it will very clear. If you are going to go on the heiau to leave a ho'okupu you better be pono otherwise Kahakalau would not recommend it.

Nazara says she is hearing that whoever goes on the heiau better be pono, and not doing it just for show.

Kahakalau says ultimately only one person goes on the heiau to the lele. It is not like hundreds of people are going on the heiau.

Pele Hanoa (Hanoa) says it is one person who offers the ho'okupu on the lele.

Curtis Tyler (Tyler) says he has been involved in La'aloa since 1993 or 1994. Uncle Leon Sterling asked him to come down because Tyler's Family, the Kipapa Family was very connected to the adjacent ahupua'a, and provided testimony in 1873 for land claims in La'aloa. It is time to move on with things, it has been many years.

We do have laws, ordinances, rules and statutes. Tyler says he is planning to file a descendancy claim. Tyler is happy to hear that people are coming forward. Tyler would like to work towards what is pono. The rules 13-300-35 say that when submitted information fails to establish a cultural descent, the Department shall recommend deferral, pending submittal of additional information and that is what Tyler has heard today.

In April of 2005, the HIBC passed recommendations regarding the lele and the buffer. Tyler has not seen the revised plan, so he does not know if that is in there, he has heard some people say it is, and others say it is not.

The La'aloa 'Ohana has requested today asking to be recognized as an appropriate Native Hawaiian Organization as defined in 13-300-2 of the HAR. Under 13-300-24(d) of the HAR the Council is to maintain a list of appropriate Native Hawaiian Organizations, agencies, and offices to notify in the event iwi and moepu are discovered. Tyler does not know what the process is to recognize or determine a organization is an appropriate Hawaiian organization. Perhaps Hawaiian Civic Clubs would be one. Tyler does not see

any criteria. Tyler would like a copy of this list and clarification on how this list is established.

Tyler has offered to help in this La'aloa situation, and will be happy to do so. He has not received any calls.

There has been some discussion on whether the La'aloa 'Ohana is a 501(c)(3). If Tyler recalls correctly, Hauani'o said they are not. There are differences in opinion of whether one should be a 501(c)(3). There is an existing County ordinance related to partnerships with community groups that requires that the groups be tax exempt and a 501(c)(3). Tyler knows this because he was involved in passing this law when he was on the County Council. There has to be some mechanism to recognize if the group is a legal entity and that group is able to receive monies on a tax free basis and a way for individuals or entities to contribute monies to these groups on a tax free basis. Tyler knows the State Constitution does not require a non-profit status in order to practice your culture. Tyler knows there is a difference in opinion.

The County is precluded by the law to enter into partnerships with groups that are not recognized as non-profit.

Young asks McDonald if she has any opinion on the revised plan.

McDonald says she has not seen a revised plan.

Lindsey says prior to the next meeting the descendants will be sent a copy.

McDonald says the 'Ainoa was in 1819 and there was a domino effect that affected the religion in Hawai'i. Up until the 1940's there were what we call kahu today that took care of these sites. McDonald knows personally of one kahu that heard development was going to happen in Kahalu'u, and he went and took the cornerstones of these heiau and said it was pau, ua noa. He said if nobody was going to take care, no sense leave these sites for the next generation to come and make up things.

McDonald understands that this particular heiau, Haukalua was one of the heiau where this happened. Ua hemo 'ia and pau. If we are talking about cultural practitioners, McDonald wants nothing to do with that. McDonald's concern is for the iwi that are there to be left alone. Don't label these iwi as religious items or artifacts, let them rest in peace. Put the buffer up, and everyone needs to leave these iwi alone.

Elarionoff asks McDonald if she is saying this Heiau was basically decommissioned.

McDonald says decommissioned is a good word. Her uncle lived across the street, and went fishing here, it is a good moi spot. He had no problem with walking over the site because it was pau.

There were people who had the responsibility to care for these sites. They saw changes that were inevitable.

A good example is a story told to her by Sam Hook about Waikoloa and Mr. Bray. This was in the early 1940's or 50's. Bray and Hook went to Brown's place, which is now Mauna Lani. When Bray was walking he told Hook he saw a lot of "chicken coops" and "big houses" by the ocean. Today those "chicken coops" are the condos and the "big houses" are the hotels. Bray saw the changes coming, and a lot of things down that side are taken care of, McDonald is not privy to talk about it now.

One of the kahu that took care on the Kona side in this area was Tutu Naluahine Ka'opua. He went and decommissioned several heiau. McDonald does not know if Haukalua was one, but he did some in Kahalu'u. These sites are special, and need to be treated with respect. Let them go naturally, that is McDonald's mana'o.

Hauani'o says four stones came back to La'aloa. That is the reason why this Heiau has been re-commissioned, they are at the base of the lele. The hukuhuki you are witnessing is like two religious factions fighting each other at this most sacred site. Haukalua is a healing temple. Surfing and fishing are healing things that are part of our culture.

Elarionoff asks in what year and under what authority these stones were returned.

Hauani'o says the year was when the iwi went to Ho'ona, and then back to La'aloa, around 1996.

Elarionoff says McDonald mentioned the stones being removed by a certain individual who had the ability to do so.

Hauani'o says those are your folks words.

Elarionoff says if the stones were returned, it must have been under some authority, and not done by just anyone.

Hauani'o says it came in a dream to his father. That is the authority.

Keolalani Hanoa (Hanoa) says the practice Hauani'o is speaking of is inoa po which is the practice of dreams. If you are a practitioner, you cannot decommission a heiau. If it is a wahi kapu, the place is sacred. You cannot take the mana away from the 'aina. The authority comes from the kupuna that took care of that place, and they come to you in your dreams.

Kahakalau says she has questions about references in the plan to the DLNR requiring a formal access agreement, is one going to be required. If there is a law that says a formal agreement needs to be in place, then one should be proposed.

Lindsey says the Department always advocates for families to have access to a site, but the agreement detailing the terms of access to the site is an agreement between the landowner and those wishing to access.

Kahakalau says this is a County Beach Park and a public religious site.

Lindsey says the Department will still require the County to work out an access agreement with the families.

Kahakalau says we have cultural practitioners.

Lindsey says anyone wishing to access the site is going have to work it out with the County, and the Department will be involved in that.

Rechtman says as an archaeological site, the DLNR is the entity that governs access to sites.

Kahakalau says the plan says "if" a formal access agreement is going to be required. How is this going to be worked out.

Lindsey says the problem here is that as a public place, anyone who wants to access the site, even if they are not family or a practitioner potentially will be allowed access.

Kahakalau thanks the County for committing to the 50 foot buffer zone.

Kahakalau says it is tough to maintain a good 501(c)(3) organization. Some where cultural practices need to be honored in these agreements and partnerships. We need to find a balance.

Saffrey says the signage needs to be revised to reflect the fines for a 6E-11 violation have changed from \$10,000 to \$25,000. Saffrey asks where the money from these fines go.

Lindsey says the signs can be revised and he is not sure exactly where the money collected from fines goes.

Sherlock says it is hard to be a 501(c)(3). If a group can't get that status, they should partner up with an organization that does have that recognition.

Mizuno says in order for a formal agreement to be reached, the group needs to have a non-profit status. There are informal ways agreements could be reached.

Rechtman says the County is waiting for a response from the SHPD on whether they accept or reject the revised burial treatment plan. The revised plan was submitted to the SHPD. The response was due months ago.

A motion is made to accept the Department's recommendation via the memorandum dated 12/9/05 from Cultural Programs Director Sunny Greer to defer Valerie Luhiau's lineal descent claim. (Elarionoff/Saffrey)

Vote: All in Favor

Young says it appears the recommendations made by the HIBC in April 2005 have not been incorporated into the revised plan. Young says he still has not been given a good reason why not.

Young hopes we will have descendancy recommendations by next meeting.

Elarionoff says if the HIBC wants to see additional revisions, the Council should be specific on what revisions we want.

Kahakalau says for her it is the issue of the lele. There should be continuing collaboration and consultations on that issue. When you make a commitment to a place like that it is a lifelong commitment. Kuleana goes way beyond western law. Kahakalau says if someone took down a lele she put up in her district, she would be right back out there putting it back up because that is the way she operates.

Mizuno says the County has been asking the SHPD to make a decision. The County was basing their proposal on who they thought were cultural descendants. If the descendants have a rightful claim then they should be heard. That is where they were coming from.

If the Council wants to recommend the lele not be removed, and have that incorporated into another revised plan, the County does not have a problem with that.

Kahakalau says this is a public place of worship and not a private burial.

Mizuno says if the Council wants the plan revised with a proposal not to remove the lele, then the County will do that.

Rechtman says the Department will have to approve that plan.

Cawthon says if everyone agrees, 'a'ole pilikia. If there is no consensus, the lele stays.

Keolalani Hanoa says these heiau and the lele are protected by Federal law. This lele is a religious object.

Tyler says when he referred to the County ordinance that required non-profit status, he was just saying what the County law is. No matter what law is on the books, if it violates a constitutional mandate, it is null and void. The other question is whether someone is going to be granted access to a public religious site. Whether Tyler agrees with it or not, that is the law.

McDonald says this is a sacred site on public land. If the decision is to use this site as a religious site, the iwi need to be taken care of first. If you insist on making this a public area, move the iwi.

Ako says nobody is contesting the lele. It is where the lele is located that is the issue. If his kupuna are in a Christian cemetery, he does not walk on the grave. For families that are connected to the site, it is a desecration to walk on it. Look at Pu'ukohola, the lele is 200 feet away from the structure.

McDonald says some people disagree, but the heiau has been decommissioned and is now a burial site. If you choose not to treat it as burial site, then remove the iwi and put it someplace where they will be treated respectfully.

Hanoa says we need to look at both sides. There are people trained in this work have rededicated this Heiau.

A motion is made to defer recommendations on the revised burial treatment plan for La'aloa Beach Park. (Saffrey/Kahakalau)

McDonald asks what the point of deferring is.

Young says hopefully by next month we will have descendants recognized by the Council and their input can be considered as recognized descendants.

Vote: All in Favor

A motion is made to close agenda item B, La'aloa Beach park. (Sherlock/Elarionoff)

Vote: All in Favor

**C. FINAL PRESERVATION PLAN FOR AN AREA IN THE AHUPUA'A OF HONOKOHAU I (NUI) AND II (IKI), KONA DISTRICT, ISLAND OF HAWAI'I
[TMK (3) 7-4-008:013, (3)7-4-08:030, (3) 7-4-08:074]**

Information/Recommendation: SHPD staff will update the HIBC on the ongoing discussions and consultations regarding approval of a final preservation plan for previously identified Native Hawaiian burials located on the subject property. Discussion on the proposed Kamanu Street Connection alignment which is currently designed to cross over the surface of site 18117. Council recommendations to the Department on proposed Kamanu Street Connection alignment.

Lindsey says the HIBC determined the iwi on these sites are to be preserved in place in October of this year. That triggered a statutory timeframe of 90 days for the Department to approve what is called a Final Preservation Plan for the sites. That timeframe will expire on January 18, 2006.

It appears the major unresolved issue is the proposed Kamanu Street alignment which will cross over the surface of one of the cave burial sites.

James Greenwell has organized descendant meetings to discuss among other issues, the Kamanu Street alignment. There was a meeting here last week. Some descendants attended last weeks meeting. There are at least 63 recognized descendants. Lindsey says it would be accurate to say that there is not a consensus among the descendants. It is possible that the Department will be initiating consultations with the descendants directly.

The Department is considering the fact that the completion of Kamanu Street was a condition placed on this developer to obtain certain permits, approvals and re-zoning in order to begin and complete this project. The Department is trying to consider all the information before reaching a decision.

The engineers have said that there are no alternative routs available. The only alignment that meets all the requirements is the alignment that crosses over the tube. The

Department has been looking to the experts in this, the County and the Developer's engineers to tell us what is going to be acceptable.

Absent an extension of the statutory timeframe, it will expire on January 18, 2006. That is not to say that the Department couldn't ask for a reasonable extension of the timeframe, but that would be contingent on the developer agreeing to do so.

Young says the engineers are saying there are no acceptable alternatives.

Lindsey says no acceptable alternatives that are going to get this road off of the tube.

Kahakalau asks how the descendant group is divided.

Lindsey says there is a fairly wide spectrum of opinion. The recommendation the Department received was find an alternative alignment. The response from the engineers is that no alternative that gets the road off of the tube will be accepted.

Ron Dela Cruz (Dela Cruz) asks if there are iwi in the portion of the cave where the road will go over.

Lindsey says the nearest iwi are over 100 feet makai of where the road will cross, but the road will cross over a portion of the ana that contains these kupuna.

Dela Cruz says there has been talk about capping the cave.

Lindsey says he has heard that there are engineering options available that will basically reinforce the ground where this road will cross over the cave. Lindsey says there is information that indicates the actual impact of constructing the road and the long term impacts of the road on the cave can be reduced, but Lindsey is not sure how you would measure that.

Dela Cruz asks if all the descendants were at the meeting here last week.

Lindsey says it would be accurate to say all the descendants were not here. Lindsey can't remember the exact number, but it was a fraction of the total.

Young says the Council had asked the developer to try and come up with a consensus among the descendants. It looks like they have exhausted the engineering alternatives. Young is very concerned about going over lava tubes, because the HIBC has worked very hard to ensure that caves are not crossed. The Council can recommend to the Department, but ultimately the State is going to make this decision.

Elarionoff says the developer has no alternative, the road must be built. It is mandated by law. The only question is how the developer is going to do it.

Dela Cruz says the road also has to be designed to ensure it is safe.

Young says it appears that the Council's only recommendation is whether you agree to go over, or you don't.

Pele Hanoa (Hanoa) says this is not the first cave, and it won't be the last. What are we going to do, build a bridge over every cave. We need to find a way to go around the cave. The developer need to compromise.

Tyler says based on the testimony by the engineers at the last meeting, the only way the design of the road could be changed significantly, was to lower the speed limit. Then there would be a problem in terms of Federal highway standards. There are possibilities being explored to reduce the impact of vibrations on the cave.

This is not something the developer asked for. This is being required.

Elarionoff says the Council should recommend that the State ask for a extension of the timeframe until after the January meeting. That way all the information can be considered.

Kahakalau says she would also like to have the descendants invited to the January meeting or get their mana'o. Kahakalau would like to hear where the descendants stand.

Arakaki says there was a poor turnout at the descendant meeting. Arakaki was there and she is against the road going over the cave.

Saffrey says it is hard for outer island descendants to attend meetings on this Island.

Young says the Council is still waiting to hear from the descendants.

McDonald asks why this is on the agenda and why the applicant is not here. This is a waste of time. McDonald was hoping the engineers would be here to explain the concept of an "at grade bridge" which may lessen or eliminate the impact of the road on the cave.

Lindsey says this is on the agenda because it is the last meeting within the statutory timeframe for the Department to make a decision. The applicant knows the item was on the agenda, but the Department feels many of the questions can be answered based on testimony contained in prior HIBC meetings.

McDonald asks in a worst case scenario, what would happen if it was determined that no road could be built.

Elarionoff says the developer has to build the road.

Tyler says unless the County Council amends the rezoning ordinance. Another possibility is that the Planning Director would have the ability to void something if it is determined that building the road is impossible or infeasible.

Keolalani Hanoa (Hanoa) wants the developer to be more inclusive in who they consult with. Hanoa says the consensus of her family is to make the road go around the cave. There are descendants who are working for the developer, and that is a conflict of interest. The developer need to consult with all the recognized descendants.

A motion is made to defer making recommendations to the plan and that the State request an extension of the statutory timeframe until after the January 2006 HIBC meeting. (Elarionoff/Hanoa)

Vote: All in Favor

A motion is made to close agenda item III C. (Sherlock/Nazara)

Vote: All in Favor

IV. Case Updates

A. “FORBES CAVE”, KAWAIHAE, SOUTH KOHALA, HAWAI’I ISLAND

Information/Recommendation: Review and Discussion on the history of the HIBC’s involvement in the “Forbes Cave” issue. Review and Discussion on previous HIBC meeting minutes where “Forbes Cave” was on the HIBC agenda. Review and Discussion on the HIBC’s involvement in the NAGPRA process as a claimant to 83 items removed from the “Forbes Cave” and formerly in the control and possession of the Bishop Museum. The HIBC will hear public testimony on the “Forbes Cave” issue. The HIBC will vote as to the disposition of the 83 items located in the “Forbes Cave” and will vote on how to convey its recommendations to any appropriate authorities and or courts. The HIBC is seeking input from the other 12 recognized claimants to the 83 items, and after a vote on the disposition of the 83 items establishes an HIBC position on the matter, the HIBC will vote to determine how to present or convey the HIBC’s position on the matter to the other 12 claimants.

U’ilani Pauole (Pauole) introduces herself to the Council. She is with the Native Hawaiian Legal Corporation (NHLC).

William Aila (Aila) introduces himself to the Council. He is with Hui Malama I Na Kupuna O Hawai’i Nei.

Pauole says on December 12, 2005 the Federal Appeals Court in San Francisco agreed with Judge Ezra. That means Judge Ezra’s order to remove the moepu stands. The timeframe for this order is unclear at this point.

Hui Malama will be seeking relief from Judge Ezra from his order. Hui Malama will be presenting new evidence to the Court as to why the Court should vacate the order. Hui Malama has statements from 6 of the 13 claimants that oppose the removal. One of those statements is from Na Papa Kanaka O Pu’ukohola.

Young says he received that document this morning and has made copies for the Council.

Pauole says they oppose the disturbance and removal of the moepu from the caves. The second claimant is DHHL. Pauole has a statement authored by the DHHL dated 9/14/05. Pauole indicates that the statement provides the Hawaiian Homes Commission’s position on the matter. There is also a declaration from Ray Soon the former Commission Chair. There is also a statement from a third claimant, the Native Hawaiian Advisory Council dated 9/15/05. The fourth claimant who Pauole says opposes disturbance of the cave is

the Nation of Hawai'i who confirms this position in a statement dated 9/15/05. The fifth claimant Pu'uuhonua o Waimanalo also confirms their position that the cave not be disturbed via a statement dated 9/15/05. The sixth claimant is Hui Malama who also opposes the removal of the moepu from Kawaihae.

Pauole requests the HIBC reconsider the November 2005 decision in light of this evidence and in light of the Court of Appeals. Pauole requests that the HIBC revote consistent with the September 2005 decision. Pauole requests that the Council put it's position in a sworn declaration that can be presented to the Court.

Saffrey says all of these statements were before the Courts December 12 decision. Saffrey asks if any of the claimants have confirmed their position after the Courts December 12 decision.

Pauole says some of the statements were filed in the Ninth Circuit Court. Hui Malama has no reason to believe their position would have changed.

Saffrey says she sat in on a DHHL Commission meeting. Ray Soon was not a Commissioner, he was the Chair at the time. The agreement among the original four claimants was to find a safe place to keep the items. Once the items were returned by Hui Malama, the consensus was to leave them there, but there was never agreement among the four claimants to return the items in the first place.

Saffrey says there should be statements from these claimants after the date of the Court ruling (December 12) confirming their positions.

Aila says they have no reason to believe that any of these groups have changed their position.

Saffrey asks including DHHL.

Aila says including DHHL. Aila says they are asking the HIBC to confirm their position from September 2005 that the caves not be disturbed.

In discussing this with his children and grandchildren, they have asked Aila if the court orders them to return the moepu, does that mean it is ok to steal from the kupuna. That is a very difficult question to answer. There is a western context and a Hawaiian context. The only way Aila can answer the question is to say that it is never ok to steal from the kupuna, whether they are alive or dead.

Pele Hanoa (Hanoa) says this issue has been going on for a long time. These are stolen items. If the person who placed these items in the cave wanted to educate people, they would have given them to Bishop Museum, but they didn't. These places were given to us to malama. These items were meant to be in there, and should stay in there. At her place in Punalu'u, she has burials, and it is her responsibility to malama.

Kahakalau says the HIBC has a history of keeping burials and moepu in place. The HIBC should provide an affidavit that says the moepu should stay in place undisturbed.

Young says he feels the items should stay where they are. The reason those items came out in the first place was that someone placed a monetary value on them, not a cultural value. These items are very important. They are more valuable to him and his children in the cave. Young can't come to any other conclusion than don't disturb.

Saffrey says in September a declaration was signed saying the HIBC had a position that the items should not be disturbed. That decision was rescinded in October. In November the Council had a split vote. There is nothing that indicates the decision was rescinded or split.

Young says those are contained in the minutes for those meetings.

Pele Hanoa says the HIBC members need to represent the communities and people in their districts.

Keolalani Hanoa agrees. The HIBC represents the people.

Tyler says the question has become what position is the HIBC going to take as a recognized claimant. With very few exceptions, the HIBC has always deferred to the lineal and cultural descendants and their wishes on the treatment of iwi and moepu. This is a little different, because the HIBC is the actual claimant in this case. It would be highly unusual for the HIBC to take a position that the iwi and moepu not stay in place. The Council is not being asked to remove the items yourself, but to just take a position on whether the items should be disturbed.

Elarionoff says that Hui Malama returned these items and now that it has gone to court, Hui Malama is coming back to the HIBC and asking for help.

Tyler says he feels Hui Malama is firm in their decision and it is the other claimants who are saying that they were not allowed to participate in that process. On paper it may appear that the NAGPRA process was not followed. From a cultural prospective, that is what is scary, a court order is forcing them to take action that goes against their cultural beliefs.

Elarionoff says his mother's family is from a mile and a half above this cave. There are many sites in this area that his family knows of. Elarionoff's concern is that more and more people are going to search this area looking for things. Elarionoff wants to find a way to put these things to rest.

Tyler says he would also like to see things put to rest. We need to do what is pono.

Joanne Kahanamoku Sterling (Kahanamoku Sterling) asks who is the Native Hawaiian Advisory Council. She has never heard of them.

Pauole says they are one of the claimants.

Young says in order to be a claimant, they must have passed some sort of review.

Arthur Mahi (Mahi) says this is his family. The items need to be put back and the cave sealed up. There is plenty mana there.

Keikialoha Kekipi (Kekipi) says he was on the HIBC for eight years representing Puna.

Kekipi says he got on the HIBC because of a desecration that happened in Puna. It did not feel right when it happened, so he took it upon himself to talk to the kupuna from the area to see what was their mana'o. A site was desecrated by looting. Someone shot the skull. The police department recovered the remains. Kekipi went there and said things that he couldn't believe came out.

There are laws we have to think about but there are moral laws we have to live by. When this happened Kekipi went and talked to kupuna that are kupa to the area. Kekipi ended up finding the family of these graves, and it ended up they were 'ohana. The cousin he met started to cry, because they thought this site was covered up in 1955. In 1955 there was a kahu for this place. There are multiple burials here, what you could call a cemetery. The cousin told him that he was called upon. She thought the '55 flow when cover them, nobody going hana'ino, nobody going malama, everything was pau.

They went to the site, and Kekipi tried to cover all the iwi to malama. Kekipi thought it was pau. It turns out that the police had taken some of the iwi, and the iwi ended up with the Historic Preservation Division. During this process, Kekipi learned about the law.

They began to pule, and she told him who was in the graves and where else there were graves. She told him that now that the kupuna had exposed themselves, and Kekipi was brought together with his cousin, it was his responsibility. Kekipi found out she was in the hospital. Kekipi went to visit. She asked him to promise her that he would follow through and take on the responsibility to malama these sites. Kekipi felt blessed and burdened. Who else in this world can understand what his cousin asked him, and what responsibility he accepted.

That is when Kekipi found out about the HIBC. Kekipi also learned that these Councils started because there was mass desecration on Maui. The people said enough was enough. The people went to the State Capitol and started to wail, not just pule, wail all day and all night until the world listened. The people had to know that there was a living culture.

Kekipi has been told that the US Constitution is based on the King James Bible. Ten Commandments. Hawaiians also have a code, no hana'ino, and no 'aihue someone else's stuff.

Kekipi came here today because his family is from Kawaihae.

There are laws that supersede the law. The right to religious and cultural practice is protected in the State Constitution. The right to religious and cultural practice is protected by the US Federal Government. The federal laws were handed down in the Bible. The laws in the Bible were handed down to us by the Supreme Sovereign of all of us.

We are here for the iwi of our kupuna. What is the meaning of e mau ke ea o ka 'aina i ka pono. Pono is a Hawaiian word and a Hawaiian practice.

It will only end when we say we are a unique people based on morals and people that recognize who we are and where we came from, our kupuna. No matter what laws get in place, Kekipi will try instill values in his children and mo'opuna about what is aloha, what is kuleana and what is pono.

Kekipi says his organization also applied as a claimant. Then he saw the paper and they are not on the list, how come. Kekipi wants to know if he can still apply, who should he talk to. Kekipi wants people to know as a claimant is against opening the cave.

Aila says if Kekipi wants to be a claimant to the Forbes Cave moepu, Bishop Museum is the one to contact.

Young asks the Deputy AG to explain the definition of an affidavit.

Matsukawa says an affidavit is a sworn statement. It is like being in court and testifying under oath. It is not joining the lawsuit, it is like being a witness.

A motion is made that the Hawai'i Island Burial Council as one of the thirteen claimants to the moepu from Forbes Cave supports leaving the moepu in Forbes Cave in place and authorizes the HIBC Chair to prepare an a signed declaration stating this position. (Kahakalau/Hanoa)

**Vote: 5 ayes (Kahakalau, Hanoa, Dela Cruz, Nazara, Young)
2 nays (Saffrey, Elarionoff)
1 abstention (Sherlock)**

The motion carries.

A motion is made to close this agenda item. (Kahakalau/Hanoa)

Vote: All in Favor

V. Inadvertent Discoveries

Information/Recommendation: Informational presentation by SHPD staff on inadvertent discoveries of skeletal remains reported to the Department in the month of November on the following properties. HIBC recommendations to the Department on determinations and short and long term treatments of the inadvertently discovered skeletal remains.

**A. Kaumalumu/Pahoehoe Ahupua'a, North Kona District, Hawai'i Island
[TMK (3) 7-7-004:062]**

**B. Honokohau Ahupua'a, North Kona District, Hawai'i Island
[TMK (3) 7-4-008:047]**

**C. Lalamilo Ahupua'a, South Kohala District, Hawai'i Island
[TMK (3) 6-7-02:064]**

A motion is made to defer this agenda item (Hanoa/Nazara)

Vote: All in Favor.

VI. ANNOUNCEMENTS

VII. ADJOURNMENT

A motion is made to adjourn the meeting (Sherlock/Nazara)

Vote: All in Favor

The meeting is adjourned at 352p.

Respectfully submitted,

Keola Lindsey, Historic Preservation Division, History and Culture Branch